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Attorneys for Defendant  
BAXTER HEALTHCARE  
CORPORATION (erroneously sued as  
BAXTER HEALTHCARE, INC.)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAVID KAPLAN

Plaintiff,

v.

BAXTER HEALTHCARE, INC., a  
Delaware corporation; and DOES 1  
THROUGH 50, Inclusive;

Defendants.

Case No. **CV 11-05447** SVW (JEM)

**DEFENDANT BAXTER  
HEALTHCARE  
CORPORATION'S NOTICE OF  
REMOVAL**

Complaint Filed: May 31, 2011

BY: \_\_\_\_\_

CLERK OF DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

11 JUN 30 PM 12:06

FILED

**TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL  
DISTRICT OF CALIFORNIA AND TO PLAINTIFF DAVID KAPLAN AND  
HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Defendant Baxter Healthcare Corporation (“BAXTER”) hereby files this Notice of Removal pursuant to 28 U.S.C. Sections 1332, 1441(a), and 1446, based on diversity of citizenship jurisdiction, in order to effect the removal of the above-captioned action from the Superior Court of the State of California for the County of Los Angeles, to the United States District Court for the Central District of California, and states that the removal is proper for the following reasons:

**I. PLEADINGS, PROCESSES, AND ORDERS**

1. On May 31, 2011 Plaintiff David Kaplan (“Plaintiff”) filed a Complaint for Damages in the Superior Court of the State of California, County of Los Angeles, entitled, “DAVID KAPLAN, Plaintiff, v. BAXTER HEALTHCARE, INC., a Delaware corporation; and DOES 1 THROUGH 50, Inclusive,” (“Complaint”) designated Los Angeles County Superior Court Case No. SC112798.

2. The Complaint alleges two purported causes of action as follows: (a) “Wrongful Termination in Violation of Public Policy,” and (b) “Intentional Infliction of Emotional Distress.”

3. On or about June 2, 2011, BAXTER, for the very first time, received notice of this lawsuit when it was served with Plaintiff’s Summons and Complaint and accompanying documents. At no time prior to the service of this Summons and Complaint was BAXTER given notice of the pending lawsuit. All process, pleadings, notices and orders received by BAXTER in this action are attached as Exhibit A hereto, as required by 28 U.S.C. § 1446(a) and are incorporated by reference as though fully set forth herein.

4. On June 29, 2011, BAXTER filed its Answer to Plaintiff's Complaint in Los Angeles County Superior Court. A conformed copy of the Answer is attached hereto as Exhibit B.

## **II. TIMELINESS OF REMOVAL**

5. Without conceding that service of the Summons and Complaint was effective for purposes of 28 U.S.C. Section 1446(b), this Notice of Removal is timely because it is being filed within thirty (30) days of BAXTER's receipt of the Summons and Complaint on June 2, 2011, and within one (1) year of the commencement of this action. Thus, removal is timely pursuant to 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure 6(a). *See also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354-56 (1999) (removal is timely if made within 30 days after complaint is served on defendant).

## **III. DIVERSITY OF CITIZENSHIP JURISDICTION**

6. This action may be properly removed on the basis of diversity of citizenship jurisdiction, in that it is a civil action between citizens of different states and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. 28 U.S.C. §§ 1332(a)(1), 1441(a).

### **A. Plaintiff's Citizenship**

7. For diversity purposes, a person is a "citizen" of the state in which he is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A party's residence is prima facie evidence of his domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). Plaintiff has alleged that "[a]t all relevant times [he] was and is a resident of the County of Los Angeles, State of California." (Exhibit A, Complaint, ¶ 1). Plaintiff, therefore, is, and at all times since the commencement of this action has been, a citizen and resident of the State of California.

1           **B.    BAXTER's Citizenship**

2           8.    BAXTER is now, and was at the time of the filing of this action, a  
3 citizen of a state other than California within the meaning of 28 U.S.C. Section  
4 1332(c)(1).

5           9.    Pursuant to 28 U.S.C. Section 1332(c), "a corporation shall be deemed  
6 to be a citizen of any State by which it has been incorporated and of the State  
7 where it has its principal place of business." The United States Supreme Court's  
8 decision in *The Hertz Corp. v. Friend*, \_\_ U.S. \_\_, 130 S.Ct. 1181 (2010), has now  
9 clarified the meaning of Section 1332(c). Specifically, the Supreme Court held  
10 that a corporation's "principal place of business" for determining its citizenship is  
11 the corporation's "nerve center":

12           We conclude that "principal place of business" is best read as  
13 referring to the place where a corporation's officers direct, control,  
14 and coordinate the corporation's activities. It is the place that Courts  
15 of Appeals have called the corporation's "nerve center." **And in  
16 practice it should normally be the place where the corporation  
maintains its headquarters -- provided that the headquarters is  
the actual center of direction, control, and coordination, i.e., the  
"nerve center" ....**

17 *Id.* at 1192 (emphasis added).

18           10.   BAXTER is now, and was at all relevant times, incorporated under  
19 the laws of the State of Delaware. BAXTER's headquarters are located at One  
20 Baxter Parkway, in Deerfield, Illinois. BAXTER's officers work from its  
21 headquarters in Illinois and direct, control, and coordinate BAXTER's activities  
22 from the headquarters in Illinois.

23           11.   Therefore, BAXTER is not a citizen of the State of California.  
24 Rather, BAXTER is a citizen of the State of Delaware and the State of Illinois  
25 pursuant to the Supreme Court's holding in *The Hertz Corp.*, 130 S.Ct. at 1192.

1           **C. Doe Defendants' Citizenship**

2           12. The presence of Doe defendants in this case has no bearing on  
3 diversity of citizenship for removal. 28 U.S.C. § 1441(a) ("For purposes of  
4 removal under this chapter, the citizenship of defendants sued under fictitious  
5 names shall be disregarded.").

6           13. Pursuant to 28 U.S.C. § 1441(a), the residence of fictitious and  
7 unknown defendants should be disregarded for purposes of establishing removal  
8 jurisdiction under 28 U.S.C. § 1332. *Fristoe v. Reynolds Metals Co.*, 615 F.2d  
9 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a  
10 removal petition). Thus, the existence of Doe defendants one through fifty,  
11 inclusive, does not deprive this Court of jurisdiction.

12           **IV. AMOUNT IN CONTROVERSY**

13           14. While BAXTER denies any liability as to Plaintiff's claims, the  
14 amount in controversy requirement is satisfied because "it is more likely than not"  
15 that the amount exceeds the jurisdictional minimum of \$75,000. *See Sanchez v.*  
16 *Monumental Life Ins.*, 102 F.3d 398, 404 (9th Cir. 1996) ("[D]efendant must  
17 provide evidence establishing that it is 'more likely than not' that the amount in  
18 controversy exceeds [the threshold] amount."). As explained by the Ninth Circuit,  
19 "the amount-in-controversy inquiry in the removal context is not confined to the  
20 face of the complaint." *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir.  
21 2004) (finding that the Court may consider facts presented in the removal petition).

22           15. In determining whether a complaint meets the \$75,000 threshold of  
23 28 U.S.C. Section 1332(a), a court may consider the aggregate value of claims for  
24 compensatory and punitive damages, as well as attorneys' fees. *See, e.g., Bell v.*  
25 *Preferred Life Ass. Soc'y*, 320 U.S. 238, 240 (1943) ("Where both actual and  
26 punitive damages are recoverable under a complaint each must be considered to  
27 the extent claimed in determining jurisdictional amount.") (footnote omitted);  
28

1 *Goldberg v. CPC Int'l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982) *cert. denied*,  
2 459 U.S. 945 (1982) (attorneys' fees may be taken into account to determine  
3 jurisdictional amount).

4 16. The allegations in the Complaint make clear that Plaintiff believes that  
5 the amount in controversy is well in excess of \$75,000. Plaintiff alleges that he  
6 was wrongfully terminated in retaliation for complaining about improper sales  
7 practices. He alleges that his termination caused him to lose wages and benefits.  
8 He also alleges that the manner of the termination caused him emotional distress  
9 and alleges that the Complaint supports punitive damages.

10 17. Specifically, Plaintiff alleges that he was employed by Defendant  
11 from "2008," until November 4, 2010, the approximate date of Plaintiff's  
12 separation. (Exhibit A, Complaint, ¶¶ 2, 40). Plaintiff alleges that, as a result of  
13 BAXTER's purported acts, he has suffered the lost wages and other benefits.  
14 (Exhibit A, Complaint, ¶ 48). In 2010, Plaintiff had a base pay rate of \$175,000  
15 per year, not including any commission pay. Therefore, because it has been  
16 approximately eight months since his termination (November 2010 through June  
17 2011), and because Plaintiff was earning approximately \$14,583.33 per month, his  
18 damages thus far would total approximately \$116,666.66.

19 18. Plaintiff also seeks emotional distress damages. Specifically, Plaintiff  
20 alleges that, as a result of BAXTER's purported acts, he "suffer[ed] great stress  
21 and severe emotional and psychological distress both during and after his  
22 employment by Baxter." (Exhibit A, Complaint, ¶ 54 ). Emotional distress  
23 damages may be considered when calculating the amount in controversy even  
24 where not clearly pled in the complaint. *Simmons v. PCR Tech.*, 209 F. Supp. 2d  
25 1029, 1034 (N.D. Cal. 2002) ; *Richmond v. Allstate Ins. Co.*, 897 F. Supp. 447, 450  
26 (S.D. Cal. 1995) ("the vagueness of plaintiffs' pleadings with regard to emotional  
27 distress damages should not preclude this Court from noting that these damages are  
28

potentially substantial”). A review of jury verdicts in California demonstrates that emotional distress awards in wrongful termination cases related to whistleblower claims and intentional infliction of emotional distress claims with similar facts to the instant case commonly exceed \$75,000. *See e.g., Perez vs. Lake Avenue Congregational Church of Pasadena*, 2004 WL 5066208 (Los Angeles County Sup. Ct.) (jury award of \$350,000 non-economic damages for wrongful termination claim based on whistleblower facts); *Gregg Levin v. Canon Business Solutions Inc.*, 2009 WL 4069942 (Los Angeles County Sup. Ct.) (jury award of \$150,000 against corporate defendant on plaintiff’s intentional infliction of emotional distress claim). (Copies of these verdicts are attached hereto as Exhibit C).

19. Plaintiff claims that he is entitled to attorneys’ fees. (Exhibit A, Complaint, Prayer For All Causes of Action No. 5).

20. Plaintiff also claims that he “is entitled to an award of punitive damages.” (Exhibit A, Complaint, ¶¶ 49, 55; Prayer For All Causes of Action No. 3). Requests for punitive damages must be taken into account in ascertaining the amount in controversy. *Davenport v. Mutual Benefit Health and Accident Assn.*, 325 F.2d 785, 787 (9th Cir. 1963). The amount of punitive damages awarded is based on the financial worth of the defendant, and is meant to punish the defendant in such a way that it will have a tangible financial consequence. Without conceding that punitive damages are appropriate or applicable here, for a defendant of BAXTER’s net worth, it is obvious that a punitive damages award, if assessed, would exceed \$75,000.

21. The Plaintiff’s allegations of various forms of damages easily exceed \$75,000. Lost wages, current and future, alone could easily amount to over \$75,000, as demonstrated above. Plaintiff also alleges that he “suffer[ed] great stress and severe emotional and psychological distress both during and after his



1 employment by Baxter.” (Exhibit A, Complaint, ¶ 54 ). Medical costs alone could  
2 easily amount to more than \$75,000. Plaintiff alleges that he is entitled to  
3 attorneys’ fees. Without conceding that attorneys’ fees are appropriate or  
4 applicable here, such fees from inception of this case through trial will easily be  
5 more than \$75,000.

6 22. Accordingly, since the amount in controversy exceeds \$75,000, the  
7 requirements for removal under 28 U.S.C. Sections 1332(a) and 1441(a) are  
8 satisfied and this Court has original jurisdiction.

9 **V. VENUE**

10 23. Plaintiff alleges that “Baxter hired plaintiff to work from his home  
11 located on Wilshire Boulevard in Los Angeles, California” (Exhibit A, Complaint,  
12 ¶ 2).

13 24. The County of Los Angeles lies within the jurisdiction of the United  
14 States District Court, Central District.

15 25. Therefore, without waiving BAXTER’s right to challenge, among  
16 other things, personal jurisdiction and/or venue by way of a motion or otherwise,  
17 venue lies in the Central District of this Court pursuant to 28 U.S.C. Sections  
18 84(c), 1441(a), and 1446(a). This Court is the United States District Court for the  
19 district within which the State Court Action is pending. Thus, venue lies in this  
20 Court pursuant to 28 U.S.C. Section 1441(a).

21 **VI. SERVICE OF NOTICE OF REMOVAL ON STATE COURT**

22 26. A true and correct copy of this Notice of Removal will be promptly  
23 served on Plaintiff and filed with the Clerk of the Superior Court of the State of  
24 California, County of Los Angeles, as required under 28 U.S.C. Section 1446(d).

25 ///

26 ///

27 ///

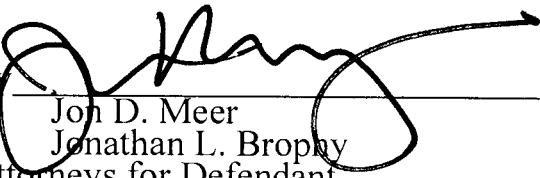
28



1           27. WHEREFORE, BAXTER prays that this civil action be removed  
2 from the Superior Court of the State of California, County of Los Angeles, to the  
3 United States District Court for the Central District of California.

4  
5 DATED: June 30, 2011

SEYFARTH SHAW LLP

6  
7 By   
8 Jon D. Meer  
9 Jonathan L. Brophy  
Attorneys for Defendant  
BAXTER HEALTHCARE, INC.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA }

3 COUNTY OF LOS ANGELES }

ss

4 I am a resident of the State of California, over the age of eighteen years, and  
5 not a party to the within action. My business address is 2029 Century Park East,  
6 Suite 3500, Los Angeles, California 90067-3021. On June 30, 2011, I served the  
within documents:

7 **DEFENDANT BAXTER HEALTHCARE CORPORATION'S**  
8 **NOTICE OF REMOVAL**

8 ☐ I sent such document from facsimile machine (310) 201-5219 on June 30,  
9 2011. I certify that said transmission was completed and that all pages  
10 were received and that a report was generated by facsimile machine  
11 (310) 201-5219 which confirms said transmission and receipt. I, thereafter,  
mailed a copy to the interested party(ies) in this action by placing a true  
copy thereof enclosed in sealed envelope(s) addressed to the parties listed  
below.

12 ☒ by placing the document(s) listed above in a sealed envelope with postage  
thereon fully prepaid, in the United States mail at Los Angeles, addressed  
as set forth below.

13 ☐ by personally delivering the document(s) listed above to the person(s) at  
14 the address(es) set forth below.

15 Grant A. Carlson, Esq.  
16 Wendy K. Shiff, Esq.  
17 FRIEDMAN, ENRIQUEZ & CARLSON, LLP  
433 North Camden Drive, Suite 965  
Beverly Hills, CA 90210  
18 Telephone: (310) 273-0777  
Facsimile: (310) 273-1115

19 I am readily familiar with the firm's practice of collection and processing  
20 correspondence for mailing. Under that practice it would be deposited with the  
21 U.S. Postal Service on that same day with postage thereon fully prepaid in the  
22 ordinary course of business. I am aware that on motion of the party served, service  
is presumed invalid if postal cancellation date or postage meter date is more than  
one day after the date of deposit for mailing in affidavit.

23 I declare under penalty of perjury under the laws of the State of California  
that the above is true and correct.

24 Executed on June 30, 2011, at Los Angeles, California.

25   
26 Patricia E. Haden  
27  
28

# **Exhibit “A”**



**Service of Process  
Transmittal**

06/02/2011

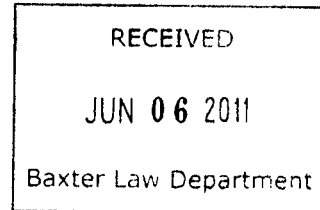
CT Log Number 518615616



**TO:** MARCIA MELCHIN  
Baxter Healthcare Corporation  
One Baxter Parkway  
Deerfield, IL 60015

**RE: Process Served in California**

**FOR:** Baxter Healthcare Corporation (Domestic State: DE)



**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** David Kaplan, Pltff. vs. Baxter Healthcare, Inc., etc., et al., Dfts.  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Summons, Complaint, Notice, Stipulation Form and Proposed Order, Attachment(s)

**COURT/AGENCY:** Los Angeles County, Superior Court, Hill Street, CA  
Case # SC112798

**NATURE OF ACTION:** Employee Litigation - Wrongful Termination - November 4, 2010 - In retaliation for reporting the illegal off label promotion and sale of Brevibloc

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Los Angeles, CA

**DATE AND HOUR OF SERVICE:** By Process Server on 06/02/2011 at 14:50

**JURISDICTION SERVED :** California

**APPEARANCE OR ANSWER DUE:** Within 30 days after service - File written response // September 19, 2011 at 8:45 a.m. - Case Management Conference

**ATTORNEY(S) / SENDER(S):** Grant A. Carlson  
Friedman, Enriquez & Carlson, LLP  
433 North Camden Dr.  
Ste. 965  
Beverly Hills, Ca 90210  
310-273-0777

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex Priority Overnight , 794825496977  
Image SOP  
Email Notification, MARCIA MELCHIN marcia\_melchin@baxter.com

**SIGNED:** C T Corporation System  
**PER:** Nancy Flores  
**ADDRESS:** 818 West Seventh Street  
Los Angeles, CA 90017  
**TELEPHONE:** 213-337-4615

Page 1 of 1 / IM

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

2:50 p.m. 6/2/11

**SUMMONS**  
(CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT:**  
(AVISO AL DEMANDADO):

BAXTER HEALTHCARE, INC., a Delaware corporation; and DOES 1  
THROUGH 50, Inclusive

**YOU ARE BEING SUED BY PLAINTIFF:**  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DAVID KAPLAN

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ORIGINAL FILED**  
LOS ANGELES SUPERIOR COURT  
JOHN A. CLARKE, CLERK

MAY 31 2011

By: \_\_\_\_\_ DEPUTY

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court of California-Los Angeles

1725 Main Street, Santa Monica, CA 90401

West Judicial District

CASE NUMBER  
(Número del Caso):

**SC112798**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Friedman, Enríquez & Carlson, LLP 433 North Camden Dr., Ste. 965, Beverly Hills, CA 90210 310 273-0777

DATE:

(Fecha)

**MAY 31 2011**

**JOHN A. CLARKE**

Clerk, by

(Secretario)

**J. Amezcua**

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **BAXTER HEALTHCARE, INC. A DELAWARE**

under: ☒ **CORPORATION**

☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

Page 1 of 1

Grant A. Carlson, Esq., State Bar No. 155933  
 Wendy K. Shiff, Esq., State Bar No. 174616  
 Friedman, Enriquez & Carlson, LLP  
 433 North Camden Drive, Suite 965  
 Beverly Hills, California 90210  
 Telephone (310) 273-0777  
 Fax (310) 273-1115

**ORIGINAL FILED**  
 LOS ANGELES SUPERIOR COURT  
 JOHN A. CLARKE, CLERK

MAY 31 2011

By: DEPUTY

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF LOS ANGELES

DAVID KAPLAN;

Plaintiff,

vs.

BAXTER HEALTHCARE, INC., a Delaware  
 corporation; and DOES 1 THROUGH 50,  
 Inclusive;

Defendants.

Case No. **SC112798**

COMPLAINT FOR WRONGFUL  
 TERMINATION IN VIOLATION OF  
 PUBLIC POLICY AND INTENTIONAL  
 INFLECTION OF EMOTIONAL  
 DISTRESS

CASE MANAGEMENT CONFERENCE

SEP 19 2011

Date

8:45 AM

*D. Kaplan*

PARTIES

Judge C. Karlan

1. Plaintiff David Kaplan is an individual who at all relevant times was and is a resident of the County of Los Angeles, State of California.

2. Plaintiff is informed and believes and thereon alleges that defendant Baxter Healthcare, Inc. ("Baxter") is a corporation organized under the laws of the state of Delaware that conducts business, manufactures and sells products throughout the world, including the County of Los Angeles and State of California. In 2008, Baxter hired plaintiff to work from his home located on Wilshire Boulevard in Los Angeles, California.

3. The true names and capacities, whether individual, corporate, associate or otherwise of the defendants named herein a Does 1 through 50, inclusive, are unknown to plaintiff at this time, who therefore sues said defendants by such fictitious names. Plaintiff will seek leave of Court to

1 amend this complaint to reflect the true names and capacities of such fictitiously named defendants  
2 when the same have been ascertained.

3 4. Plaintiff is informed and believes and thereupon alleges that at all times material  
4 hereto each of the defendants, including defendants fictitiously named as Does 1 through 50,  
5 inclusive, were and now are either the agents or principals of each of the other defendants, and of  
6 each other, and in such capacity or capacities, participated in the acts and conduct alleged herein and  
7 incurred liability to plaintiff therefore.

#### 8 FACTS COMMON TO ALL CAUSES OF ACTION

##### 9 A. Baxter is a Global Corporation with a Strong Presence in California

10 5. Plaintiff is informed and believes and thereon alleges that as stated on its website  
11 (www.Baxter.com), "Baxter is a global medical products and services company with expertise in  
12 medical devices, pharmaceuticals and biotechnology." Plaintiff is further informed and believes and  
13 thereon alleges that as stated on its website, Baxter employs approximately 49,700 employees  
14 throughout the world and has research, manufacturing, distribution and administrative facilities  
15 located throughout the United States as well as Argentina, Australia/New Zealand, Austria, Belgium,  
16 Brazil, Canada, Chile, China, Colombia, Costa Rica, Czech Republic, Germany, India/Southeast  
17 Asia, Ireland, Italy, Japan, Malta, Mexico, North Asia, Poland, Saudi Arabia, Spain, Switzerland,  
18 Tunisia, Turkey and the United Kingdom.

19 6. Plaintiff is informed and believes and thereon alleges that as stated on its website, "in  
20 2009, Baxter sales in the U.S. totaled \$5.3 billion, 43 percent of a total of \$12.6 billion." Baxter's  
21 global headquarters are located in Deerfield, Illinois, approximately 30 miles north of Chicago. "In  
22 addition to its global headquarters . . . Baxter has maintained a strong presence in the United States.  
23 The 20,600 employees in the U.S. and Puerto Rico represent approximately 40 percent of Baxter's  
24 total employee population worldwide. In total, Baxter operates more than 80 facilities across the  
25 United States[.]"

26 7. Plaintiff is informed and believes and thereon alleges that as stated on its website,  
27 with "2,850 employees, California has the largest U.S. presence outside of Baxter's home base in  
28 Northern Illinois. [Furthermore,] the majority (approximately 2,400) of Baxter employees are



1 located at the Los Angeles, Irvine, Thousand Oaks and Westlake Village facilities in Southern  
2 California[.]"

3 8. Plaintiff is informed and believes and thereon alleges that as stated on its website  
4 Baxter employs thousands of employees at numerous locations in Arkansas, Florida, Illinois, Indiana,  
5 Mississippi, New Jersey, North Carolina and Puerto Rico.

6 9. Plaintiff is informed and believes and thereon alleges that as stated on its website in  
7 2009, "Baxter's sales in Europe, the Middle East and Africa (EMEA) were more than \$4 billion. The  
8 company's EMEA region employs more than 14,700 people and is headquartered in Zurich,  
9 Switzerland."

10 **B. Baxter Hires Plaintiff to Increase its Sale of Brevibloc**

11 10. Plaintiff is a college graduate who has worked in field sales, training, sales operations  
12 and sales management in the biotech and pharmaceutical fields for more than two decades. By 2008,  
13 plaintiff had reached the upper management level. On or about October 13, 2008, Baxter hired  
14 plaintiff as a National Sales Manager. On or about February 22, 2010, Baxter promoted plaintiff to  
15 National Sales Director. At all times, and as intended by Baxter, plaintiff worked from his home in  
16 Los Angeles, California.

17 11. One of the products that Baxter sells is called Brevibloc. Brevibloc is an IV  
18 beta-blocker that medical professionals administer before, during and after surgery to stabilize  
19 patients' blood pressure and heart rates. The Food and Drug Administration ("FDA") has approved  
20 the use of Brevibloc by adult patients only. Although Baxter had been selling Brevibloc for  
21 approximately ten years when it hired plaintiff, Baxter had never sold Brevibloc at its full potential.  
22 In fact, sales of Brevibloc had been declining consistently by between 2 and 4 percent over the years  
23 prior to the date Baxter hired plaintiff.

24 12. Baxter had been selling Brevibloc through a dedicated sales force of approximately  
25 120 sales representatives known within Baxter as the Inhalation Sales Reps ("IA Reps"). The IA  
26 Reps primarily sold a variety of inhaled gases, an anti-nausea medication and Brevibloc. The IA  
27 Reps and their various regional managers lived in and serviced specific regions and marketed and  
28 sold to hospitals within their respective regions.

1           13. At the time Baxter hired plaintiff it was apparent to Baxter that the IA Reps were  
2 generally more comfortable selling the inhaled gases, thereby causing the decline in Brevibloc sales.  
3 To remedy the declining sales of Brevibloc, Baxter was starting a separate dedicated sales force to  
4 promote Brevibloc sales.

5       **C. Plaintiff Assembles the Critical Care Sales Force**

6           14. Baxter hired plaintiff as part of its plan to promote the sale of Brevibloc. Plaintiff's  
7 job was to create a new Critical Care Sales Force ("CCSF") that would be dedicated solely to selling  
8 Brevibloc. Baxter's goal was ultimately to transfer the bulk of Brevibloc sales responsibilities from  
9 the IA Reps to the CCSF. There would, however, remain enough overlap to allow the IA Reps to  
10 continue to promote Brevibloc on those accounts CCSF did not handle.

11           15. Plaintiff did not place any current Baxter employees on the CCSF. Rather, plaintiff  
12 utilized his more than twenty years of industry experience and relationships to assemble a top-notch  
13 team. The 8 members of plaintiff's CCSF lived and worked in locations across the United States,  
14 including: Atlanta, GA; Charlotte, NC; Dallas and Houston, TX; Los Angeles, CA; Miami, FL;  
15 Philadelphia, PA; and Washington DC. The CCSF members communicated daily by phone and  
16 email and held tri-annual meetings in New York and Dallas.

17       **D. Plaintiff's Critical Care Sales Force Achieves Great Success**

18           16. In plaintiff's first year, the CCSF increased sales of Brevibloc by 25 percent in  
19 called-on accounts. The CCSF achieved this 25 percent increase while during the same time, the IA  
20 Reps' sales declined by 2 percent. Baxter was so pleased with the CCSF's success, it more than  
21 tripled the size of the CCSF to 28 sales representatives and 3 regional managers. Baxter also  
22 promoted plaintiff to the position of National Sales Director.

23           17. In plaintiff's second year, the CCSF generated a double-digit increase in Brevibloc  
24 sales, even though plaintiff was working with what was essentially an entirely new team. While the  
25 CCSF achieved this growth, the IA Reps' sales decreased by 4 percent.

26           18. In Baxter's greed for sales revenue, Baxter senior management then required that the  
27 CCSF members had to demonstrate a 45 percent growth in sales in order to receive their  
28 commissions. Baxter's senior management did not care that by placing such unrealistic demands on

1 the CCSF it would destroy the team members' incentive to work hard to maintain consistent results  
2 over time. Baxter's choice of greed over morality is a pervasive problem - one that ultimately led  
3 Baxter to wrongfully terminate plaintiff.

4 **E. Plaintiff Discovers Baxter's Illegal, Off-Label Sale of Brevibloc**

5 19. As noted above, the FDA approved Brevibloc for use only in adult patients. Indeed,  
6 the FDA package insert makes clear that it is not approved for use in children. Use of Brevibloc in  
7 adults is an "approved" use.

8 20. While the FDA has not approved Brevibloc for use in children, a physician may,  
9 however, use his or her own medical judgment to decide to administer Brevibloc in connection with  
10 the treatment of a child. This would be an "off label" use.

11 21. Importantly, while off label use by a physician is appropriate, it is not appropriate and  
12 is in fact illegal for Baxter to promote any off label use of a product or to pay its sales representatives  
13 commissions on off label sales. Doing so is a serious violation of federal law that could subject  
14 Baxter and its executives to monetary and/or criminal sanctions.

15 22. In or about June 2009, plaintiff added Greg Giant to the CCSF. Mr. Giant lives in  
16 the greater Chicago area and had worked for Baxter for approximately 15 years prior to joining the  
17 CCSF. Mr. Giant had worked primarily as an IA Rep but had been moved to a hybrid sales and  
18 marketing role just prior to joining the CCSF.

19 23. Plaintiff asked Mr. Giant to send him information about his accounts to determine  
20 their overall sales potential. When plaintiff reviewed Mr. Giant's accounts, he noticed there were  
21 one or possibly two children's hospitals in the Chicago area that were receiving Brevibloc.  
22 Furthermore, it was evident that Mr. Giant had been receiving commissions with respect to these  
23 sales of Brevibloc to the children's hospitals. That Mr. Giant had received commission payments  
24 was in and of itself evidence of off label promotion of Brevibloc to these accounts.

25 24. Plaintiff was extremely concerned about the illegal payment of commissions for off  
26 label use of Brevibloc and felt he had to immediately inform Baxter senior management of this  
27 problem so that it could be remedied. Plaintiff believed that this off label promotion was an anomaly  
28 and that Baxter senior management would be eager to immediately remove these accounts and

1 prevent and further off label promotion of Brevibloc to the children's hospitals.

2 **F. Baxter Reprimands Plaintiff for Reporting the Off-Label Sale of Brevibloc**

3 25. Shortly after learning of Mr. Giant's sale of Brevibloc to children's hospitals, plaintiff  
4 sent his superior, Marie Keeley, the Vice President of Sales for Baxter's Gas and Critical Care  
5 ("GACC") Division, an email informing her of the improper payment of commissions for off label  
6 use of Brevibloc. Within the email, plaintiff stressed that any children's hospitals should be  
7 immediately removed from Mr. Giant's account list. Ms. Keeley, who lives in New Jersey,  
8 responded and indicated that she understood plaintiff's request and stated that she would take care  
9 of the problem. Plaintiff subsequently noticed that the children's hospital account was removed from  
10 Mr. Giant's account list.

11 26. Approximately two weeks later, plaintiff spoke with Ms. Keeley at a national sales  
12 meeting in New York. Although plaintiff believed he was doing his job and should be commended  
13 for recognizing a potential violation and acting quickly to remedy it, Ms. Keeley felt otherwise. At  
14 the meeting, Ms. Keeley shook her head disapprovingly and reprimanded plaintiff for reporting the  
15 violation by email. Ms. Keeley told plaintiff that now the email would be a permanent part of  
16 Baxter's records and that it would be problematic if an outside entity such as the FDA were to  
17 perform a search of Baxter's servers.

18 27. Plaintiff told Ms. Keeley that he assumed the violation was an anomaly and, for that  
19 reason, Baxter's quick action to remedy it should be sufficient to assure the FDA or any outside  
20 governing agency that Baxter was acting diligently and in good faith. Plaintiff was alarmed by this  
21 encounter, but felt that his main purpose - to properly address the problem - had been achieved.

22 **G. One Year Later Plaintiff Learns that Off-Label Sales of Brevibloc are Pervasive**

23 28. In or about early August 2010, plaintiff received a telephone call from Gretchen  
24 Burkett, who had been a member of the CCSF since approximately February 2010. Ms. Burkett,  
25 a West Coast Regional Business Manager, lives in Malibu, California and spoke with plaintiff on  
26 a weekly basis. Plaintiff was stunned when Ms. Burkett asked him "Why are the IA Reps receiving  
27 commissions on sales of Brevibloc to children's hospitals?"

28 \ \ \

1           29. Plaintiff responded that he was shocked by her question. Plaintiff told Ms. Burkett  
 2 that the year before he had alerted Baxter of this problem and was led to believe the problem had  
 3 been handled. Ms. Burkett told plaintiff that she had learned about the commissions from Tim  
 4 O'Neil, the San Diego IA Manager.

5           30. When plaintiff reviewed the San Diego IA accounts he discovered that every  
 6 children's hospital in San Diego County was assigned to the IA Reps and that both the IA Reps and  
 7 their managers were receiving commissions from the sales as well. It became clear to plaintiff that  
 8 for years, Baxter had pervasively promoted off label sales of Brevibloc.

9       **H. Baxter Reprimands Plaintiff for His Second Report of Off-Label Sales of Brevibloc**

10          31. Shortly after his conversation with Ms. Burkett, plaintiff sent an email to Ms. Keeley  
 11 and the executive management teams of two different divisions advising them that the problem of  
 12 off-label accounts being assigned to IA Reps had continued and that these IA Reps and their  
 13 managers were being paid commissions from these accounts. Plaintiff was very worried about these  
 14 illegal sales and the fact that Baxter had apparently ignored his efforts to stop these sales the year  
 15 before.

16          32. Once again, however, Baxter management responded as if plaintiff -- not the illegal  
 17 commissions -- were the problem. Ms. Keeley wrote back to plaintiff by email and attempted to  
 18 defend Baxter's position. Plaintiff then replied to Ms. Keeley and to the executive management  
 19 teams and provided examples of sales representatives who received commissions on off label sales.  
 20 During this email exchange, plaintiff was mindful of Ms. Keeley's negative reaction to the use of  
 21 email and sought to downplay the obvious reality that off label promotion of Brevibloc was  
 22 occurring regularly.

23          33. Approximately five minutes after plaintiff sent his last email, Scott Luce, a General  
 24 Manager from the greater Chicago area, sent plaintiff an email that stated "Stop all email now."  
 25 Accordingly, neither plaintiff nor any other Baxter executive sent any further emails on this issue.

26 \ \ \

27 \ \ \

28 \ \ \

1           34.     The following Monday, Mr. Luce telephoned plaintiff and asked him to apologize to  
2 Ms. Keeley for highlighting this issue via corporate email. Mr. Luce said, "Man, what were you  
3 thinking? You put 'off label' and 'commission pay-outs' on our server. Bob Davis [a General  
4 Manager in New Jersey] and Marie [Keeley] are furious with you!"

5           35.     At this time, plaintiff finally realized that Baxter's senior executives had little concern  
6 about whether Baxter was acting legally but were more concerned about sales revenue and "covering  
7 their tracks." Plaintiff realized that his time with Baxter would be short and that he would likely be  
8 terminated soon.

9     **I.     One Month Later Baxter Terminates Plaintiff Based for a Pretextual Reason**

10           36.     Approximately two weeks after plaintiff's second report of improper promotion and  
11 off-label sales of Brevibloc, Baxter assigned plaintiff an "executive coach." An executive coach is  
12 an outside consultant familiar with a company or industry who is hired by the company to help an  
13 individual "fit in" and communicate more effectively within a company culture. Typically, an  
14 executive coach is hired when an executive is having difficulty working smoothly within the  
15 executive team.

16           37.     Here, plaintiff was not the typical employee who required an executive coach. He  
17 had been working for Baxter for more than two years, he had assembled and grown the CCSF, and  
18 had increased the sales of Brevibloc at a fantastic rate. Plaintiff had worked and communicated  
19 smoothly and efficiently with the CCSF and the senior executives. There had never been any  
20 problem with plaintiff's performance or communication and plaintiff had never been reprimanded  
21 for anything (other than reporting off label commissions for Brevibloc).

22           38.     It was clear to plaintiff that Baxter hired the executive coach solely to prevent plaintiff  
23 from reporting the off label sales of Brevibloc and to stop voicing his concerns by email. Although  
24 the senior executives told plaintiff they were hiring the executive coach because he was a valuable  
25 team member and they wanted him to continue at Baxter, it was also clear to plaintiff that hiring the  
26 executive coach was simply a step toward firing him based on a pretextual reason.

27           39.     On or about November 4, 2010, plaintiff met with Megan Finnigan, a Human  
28 Resources Manager from Baxter's headquarters in Deerfield, Illinois. At the meeting, plaintiff was



1 told that his job was in jeopardy because of some private emails he had exchanged with certain  
2 members of the CCSF two years earlier. These emails consisted of typical company venting between  
3 co-workers, akin to what might be said over a cup of coffee during a break at Starbucks. The emails  
4 did not contain any sensitive or confidential company information.

5 40. At this meeting, Ms. Finnigan, cited an obscure policy regarding the use of email for  
6 private communications. Although Ms. Finnigan indicated that the policy was explained somewhere  
7 within the mountain of initial employment documentation, plaintiff had never seen or been told about  
8 this policy either before or during his employment and he had never been told to advise the  
9 individuals he hired of the policy. In fact, to plaintiff's knowledge, no one at Baxter observed this  
10 alleged policy. Despite these facts Baxter terminated plaintiff as of November 4, 2010. It is ironic  
11 that Baxter immediately reprimanded plaintiff twice for reporting serious work-related violations by  
12 email and then turned around and fired him two years after the fact for making personal comments  
13 to his colleagues by email.

14 41. Within 24 hours after terminating plaintiff, Baxter flew the three CCSF regional  
15 managers who reported to plaintiff to its headquarters in Deerfield, Illinois. Gretchen Burkett from  
16 California, along with Bill Muldowney from Pennsylvania and Doug Pennington from Texas were  
17 put in separate conference rooms to discuss the situation. Each was told how valuable they were to  
18 Baxter and each was given a retention bonus to keep them from leaving Baxter. These regional  
19 managers were told that the decision to terminate plaintiff was a "difficult" one that had nothing to  
20 do with any performance issues.

21 42. None of the three regional managers was given any reason for plaintiff's termination.  
22 And, importantly, none of these regional managers was told about the alleged policy regarding  
23 private emails, even though these three individuals were some of the colleagues with whom plaintiff  
24 had exchanged the private emails. Indeed, no one at Baxter even raised the issue as an aside or as  
25 a warning to prevent any further "infractions."

26 43. To recap, therefore, even though plaintiff and all three regional managers violated the  
27 alleged policy two years earlier, Baxter, however, only terminated plaintiff -- the only person who  
28 recently reported the off label promotion of Brevibloc. Moreover, Baxter never even told the



1 regional managers about their alleged violation of this policy or ever mentioned the alleged policy  
 2 at all. This conduct demonstrates that Baxter was never concerned about the alleged email policy.  
 3 Rather, Baxter merely raised the alleged policy as a pretext to fire plaintiff in retaliation for reporting  
 4 Baxter's illegal conduct.

### 5 **FIRST CAUSE OF ACTION**

#### 6 **(Wrongful Termination in Violation of Public Policy)**

#### 7 **(Against all Defendants)**

8 44. Plaintiff incorporates and realleges herein paragraphs 1 through 43 as if set forth fully  
 9 herein.

10 45. On or about November 4, 2010, after reprimanding plaintiff for reporting the illegal  
 11 off label promotion and sale of Brevibloc for use in children and in violation of public policy,  
 12 defendants wrongfully terminated plaintiff from his employment with Baxter.

13 46. Defendants reprimanded and ultimately terminated plaintiff for reporting the illegal  
 14 off label promotion and sale of Brevibloc for use in children and not for the manufactured, pretextual  
 15 reason they claim.

16 47. Defendants' termination of plaintiff violates fundamental public policy for at least two  
 17 reasons. First, it violates the fundamental public policy against the promotion and sale of drugs and  
 18 pharmaceutical products for off label or unapproved uses under federal law and embodied, *inter alia*,  
 19 in the United States Code and the Code of Federal Regulations. *See e.g.* 21 U.S.C. § 331; 21 C.F.R.  
 20 §§ 99.1 *et seq.* and 21 C.F.R. §§ 300 *et seq.* Second, it violates the fundamental public policy  
 21 against retaliation by an employer against an employee who refuses to engage in or otherwise reports  
 22 illegal conduct under California law. *See e.g.* Cal. Labor Code §§ 1102.5, 2922 and 6310. *See also*  
 23 *Tameny v. Atlantic Richfield, Co.*, 27 Cal. 3d 167, 172-74 (1980).

24 48. Defendants' termination of plaintiff directly and proximately caused plaintiff to suffer  
 25 damages in an amount according to proof at trial, including but not limited to, statutory damages,  
 26 lost wages and other benefits, emotional distress and pain and suffering.

27 \\\

28 \\\





CASE NO. SC112798

**NOTICE OF CASE ASSIGNMENT TO INDIVIDUAL CALENDAR COURT**

**TO PLAINTIFFS AND PLAINTIFFS' ATTORNEYS OF RECORD or PLAINTIFFS  
IN PRO PER:**

**IT IS HEREBY ORDERED AND YOU ARE HEREBY NOTIFIED** that this action shall be assigned to a Judge for all purposes, including trial, as follows:

Judge C. Karlan

Department: N

☒ Santa Monica Courthouse  
1725 Main Street  
Santa Monica, CA 90401

☐ Judge Richard A. Stone  
Beverly Hills Courthouse  
Department WE-X  
9355 Burton Way  
Beverly Hills, CA 90210

**IT IS FURTHER ORDERED THAT PLAINTIFF OR COUNSEL FOR PLAINTIFF SHALL GIVE NOTICE OF THIS ALL-PURPOSE CASE ASSIGNMENT** by serving a copy of this Notice on all parties to this action at the time the Summons and Complaint are served, or, if not a served party, then when such party (including any cross-defendant or complainant-in-intervention) appears in the action.

**CASE MANAGEMENT REVIEW AND CONFERENCE:** Upon the filing of the Complaint, a Case Management Review and Conference will be calendared for hearing in the Court to which the case is assigned. The hearing date will be stamped upon the face of the Complaint. Plaintiff shall give notice of the Case Management Review and Conference to all named parties in conjunction with service of the Summons and Complaint and include any later appearing party such as a cross-defendant or complainant-in-intervention served within this time period. Proof of service must be brought to the hearing if not previously filed. Failure to timely file proof of service of Summons and Complaint within 60 days after filing the Complaint (CRC 3.110) may result in an Order to Show Cause re sanctions being issued. (CRC 3.110(f).)

If a case is assigned to Department X, located in the Beverly Hills Courthouse, all documents, pleadings, motions, and papers filed subsequent to the original Complaint shall be filed directly in the courtroom stamped upon the Complaint.

Pursuant to CRC 3.725, no later than 15 calendar days before the date set for the Case Management Conference or Review, each party must file a Case Management Statement and serve it on all other parties in the case. In lieu of each party's filing a separate Case Management Statement, any two or more parties may file a joint Statement.

The subjects to be considered at the Case Management Conference shall include the following (CRC Rule 3.727):

- (1) Whether there are any related cases;
- (2) Whether all parties named in the Complaint or Cross-Complaint have been served, have appeared, or have been dismissed;
- (3) Whether any additional parties may be added or the pleadings may be amended;
- (4) Whether, if the case is a limited civil case, the economic litigation procedures under Code of Civil Procedure Section 90 et seq. will apply to it or the party intends to bring a motion to exempt the case from these procedures;
- (5) Whether any other matters (e.g., the bankruptcy of a party) may affect the Court's jurisdiction or processing of the case;
- (6) Whether the parties have stipulated to, or the case should be referred to, judicial arbitration in courts having a judicial arbitration program or to any other form of alternative dispute resolution (ADR) process and, if so, the date by which the judicial arbitration or other ADR process must be completed;
- (7) Whether an early settlement conference should be scheduled and, if so, on what date;
- (8) Whether discovery has been completed and, if not, the date by which it will be completed;
- (9) What discovery issues are anticipated;
- (10) Whether the case should be bifurcated or a hearing should be set for a motion to bifurcate under Code of Civil Procedure Section 598;
- (11) Whether there are any Cross-Complaints that are not ready to be set for trial and, if so, whether they should be severed;
- (12) Whether the case is entitled to any statutory preference and, if so, the statute granting the preference;
- (13) Whether a jury trial is demanded and, if so, the identity of each party requesting a jury trial;

NAME, ADDRESS AND PHONE NUMBER  
OF ATTORNEYS

FILE STAMP

Attorney(s) for:

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

CASE NUMBER

PLAINTIFF(S).

vs.

DEFENDANT(S).

STIPULATION AND ORDER  
RE BINDING ARBITRATION

Status Conference Date:

At \_\_\_\_\_ a.m. in Department \_\_\_\_\_

THE PARTIES SHOULD CONSIDER BINDING ARBITRATION. BINDING ARBITRATION PROVIDES FINALITY AND ELIMINATES COURT APPEARANCES. THE ARBITRATION IS PROVIDED AT NO COST TO THE PARTIES. IF THIS STIPULATION IS SIGNED AND FILED DIRECTLY IN THE ABOVE DEPARTMENT, FIVE COURT DAYS PRIOR TO THE DATE SET FOR THE STATUS CONFERENCE, NO APPEARANCE IS REQUIRED AT THE STATUS CONFERENCE.

The parties and their attorneys, hereby stipulate as follows:

1. The matter shall be submitted to binding arbitration and the parties waive their right to a trial de novo as provided in California Code of Civil Procedure, Section 1141.20.
2. \_\_\_\_\_, a member of The Superior Court Arbitration panel, shall serve as arbitrator.
3. All cross complaints have been filed.
4. All fictitious and named defendants/cross-defendants who have not filed an answer are dismissed.
5. The court retains jurisdiction over motions to enforce the arbitration award and other post-arbitration motions.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Plaintiff\_\_\_\_\_  
Attorney for Plaintiff\_\_\_\_\_  
Defendant\_\_\_\_\_  
Attorney for DefendantORDER

It is so ordered:

DATE: \_\_\_\_\_

JUDGE \_\_\_\_\_

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE**

[CRC 3.221 Information about Alternative Dispute Resolution]

For additional ADR information and forms visit the Court ADR web application at [www.lasuperiorcourt.org](http://www.lasuperiorcourt.org) (click on ADR).

The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (Civil only).

**What is ADR:**

Alternative Dispute Resolution (ADR) is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation (NE), and settlement conferences, are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

There are many different kinds of ADR. All of them utilize a "neutral", an impartial person, to decide the case or help the parties reach an agreement.

**Mediation:**

In mediation, a neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

**Cases for Which Mediation May Be Appropriate**

Mediation may be particularly useful when parties have a dispute between or among family members, neighbors, or business partners. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

**Cases for Which Mediation May Not Be Appropriate**

Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

**Arbitration:**

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. *Nonbinding arbitration* means that the parties are free to request a trial if they do not accept the arbitrator's decision.

**Cases for Which Arbitration May Be Appropriate**

Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

**Cases for Which Arbitration May Not Be Appropriate**

If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

**Neutral Evaluation:**

In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

**Cases for Which Neutral Evaluation May Be Appropriate**

Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

**Cases for Which Neutral Evaluation May Not Be Appropriate**

Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

**Settlement Conferences:**

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.



# **Exhibit “B”**

**CONFORMED COPY**

OF ORIGINAL FILED  
Los Angeles Superior Court

JUN 29 2011

John A. Clarke, Executive Officer/Clerk

~~By D. McKinnis, PERRY~~

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5 Facsimile: (310) 201-5219

6 Attorneys for Defendant  
BAXTER HEALTHCARE CORPORATION  
7 (erroneously sued as BAXTER  
HEALTHCARE, INC.)

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 DAVID KAPLAN

11 Plaintiff,

12 v.

13 BAXTER HEALTHCARE, INC., a Delaware  
14 corporation; and DOES 1 THROUGH 50,  
15 Inclusive;

16 Defendants.

) Case No. SC112798

)  
) **DEFENDANT BAXTER HEALTHCARE**  
) **CORPORATION'S ANSWER TO**  
) **PLAINTIFF'S UNVERIFIED**  
) **COMPLAINT**

) Judge: Hon. Craig D. Karlan  
) Dept.: N

) Complaint Filed: May 31, 2011

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DEFENDANT BHC'S ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT

**TO PLAINTIFF AND TO HIS ATTORNEYS OF RECORD:**

Defendant BAXTER HEALTHCARE CORPORATION ("Defendant"), erroneously sued as BAXTER HEALTHCARE, INC., hereby answers the Unverified Complaint of DAVID KAPLAN ("Plaintiff") as follows:

Pursuant to the provisions of California *Code of Civil Procedure* § 431.30(d), Defendant denies, generally and specifically, each and every allegation, statement, matter and each purported cause of action contained in the Complaint, and without limiting the generality of the foregoing, denies, generally and specifically, that Plaintiff has been damaged in the manner or sums alleged, or in any way at all, by reason of any acts or omissions of Defendant.

Defendant answers only on behalf of itself and asserts the affirmative defenses herein.

**AFFIRMATIVE DEFENSES**

In further answer to the COMPLAINT, and as separate and distinct affirmative defenses, Defendant alleges the following defenses. In asserting these defenses, Defendant does not assume the burden of proof as to matters that, pursuant to law, are Plaintiff's burden to prove.

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Cause of Action Upon Which Relief Can Be Granted)**

1. Plaintiff's Complaint, and each purported cause of action contained therein, fails to state facts sufficient to constitute any cause of action and fails to state a claim upon which any relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

2. Plaintiff's Complaint, and each purported cause of action contained therein, are barred by the applicable statute of limitations. Cal. Civ. Proc. Code §§ 337(1), 338 (b), (c), and (d); 340.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Failure to State Sufficient Facts to Constitute A Cause of Action)**

3 3. Plaintiff's Complaint, and each purported cause of action contained therein, fails  
4 to state claims upon which relief can be granted because California law precludes Plaintiff from  
5 bringing tort claims arising out of the employment relationship.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 **(Workers' Compensation Exclusivity)**

8 4. Plaintiff's Complaint, and each allegation contained therein, is barred, in whole or  
9 in part, to the extent Plaintiff seeks recovery for alleged physical or emotional injuries, based on  
10 exclusive remedies available under the applicable provisions of the California Workers'  
11 Compensation Act, Cal. Labor Code §§ 3600 *et seq.*, which preempts such claims.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 **(Failure to Plead Facts Supporting a Claim of Emotional Distress)**

14 5. Any claim for alleged emotional or mental distress or suffering, discomfort,  
15 humiliation and embarrassment should be stricken from Plaintiff's COMPLAINT because  
16 Plaintiff has failed to plead with particularity any facts supporting such a claim, as required by  
17 law.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 **(Collateral Source)**

20 6. Plaintiff's Complaint, and each allegation contained therein, is barred to the  
21 extent that Plaintiff has not alleged any tangible or medical evidence of emotional distress, pain,  
22 anxiety or suffering as a result of any conduct alleged in the COMPLAINT. Alternatively, to the  
23 extent that any alleged emotional distress, pain, or anxiety was suffered, it was caused by a  
24 collateral source other than the conduct of Defendant.

25 **SEVENTH AFFIRMATIVE DEFENSE**

26 **(At-Will Employment)**

27 7. Plaintiff's Complaint, and all causes of action contained therein, is barred to the  
28 extent that Plaintiff was an at-will employee, and his terms and conditions of employment could

1 be modified or changed at any time, with or without notice, and with or without cause, as  
 2 provided under section 2922 of the California Labor Code. Similarly, Plaintiff's employment  
 3 could be terminated at any time with or without notice, and with or without cause, as provided  
 4 under section 2922 of the California Labor Code.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 **(Good Cause)**

7 8. Plaintiff's Complaint, and each purported cause of action contained therein, fails  
 8 to state claims upon which relief can be granted because any decisions made with respect to  
 9 Plaintiff's employment were based upon good cause.

10 **NINTH AFFIRMATIVE DEFENSE**

11 **(Good Faith)**

12 9. Plaintiff's Complaint, and each purported cause of action contained therein, is  
 13 barred in whole or in part because Defendant had an honest, reasonable, and good-faith belief in  
 14 the facts on which it based any acts, omissions, and/or conduct taken with respect to Plaintiff.

15 **TENTH AFFIRMATIVE DEFENSE**

16 **(No Violation of Public Policy)**

17 10. Plaintiff's Complaint, and each purported cause of action contained therein, are  
 18 barred to the extent that Plaintiff's allegations of violation of public policy do not identify a  
 19 fundamental public policy based on a constitutional, statutory or regulatory provision applicable  
 20 to Defendant.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 **(No Protected Activity)**

23 11. Plaintiff's Complaint, and each purported cause of action contained therein, are  
 24 barred to the extent that Plaintiff's allegations of wrongful termination are not based upon any  
 25 protected activity undertaken by Plaintiff.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Equal Dignities)**

12. Plaintiff's Complaint, and each purported cause of action contained therein, are barred by the equal dignities rule.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Plaintiff's Negligence)**

13. Plaintiff's Complaint, and each purported cause of action contained therein, fails to state claims upon which relief can be granted because Plaintiff is guilty of a culpable degree of negligence and is therefore liable to his employer for the damage caused to his employer. Cal. Lab. Code § 2865.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Failure to Conform to Usage of Place of Performance)**

14. Plaintiff's Complaint, and each purported cause of action contained therein, fails to state claims upon which relief can be granted because Plaintiff failed to perform his services in conformity to the usage of the place. Cal. Lab. Code § 2857.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Degree of Skill and Failure to Use Skill Possessed)**

15. Plaintiff's Complaint, and each purported cause of action contained therein, fails to state claims upon which relief can be granted because Plaintiff failed to use ordinary care and diligence in the performance of his employment. Cal. Lab. Code §§ 2858, 2859.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Plaintiff's Willful Breach)**

16. Plaintiff's Complaint, and each purported cause of action contained therein, fails to state claims upon which relief can be granted because Plaintiff willfully breached his duties as an employee, habitually neglected his duties, and/or failed to perform his duties. Cal. Lab. Code § 2924.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Failure to Comply with Employer's Directions)**

17. Plaintiff's Complaint, and each purported cause of action contained therein, is barred in whole or in part because Plaintiff failed to substantially comply with all the directions of his employer and its agents, representatives, employees, and/or supervisors concerning the services upon which he was engaged, and such obedience was neither impossible, nor unlawful, and did not impose new and/or unreasonable burdens upon Plaintiff.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Plaintiff's Conduct on the Job)**

18. Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that any act, decision or conduct taken toward Plaintiff was based on Plaintiff's conduct on the job.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Statute of Frauds)**

19. Plaintiff's Complaint, and each purported cause of action contained therein, fails to state claims upon which relief can be granted because Plaintiff's claims are barred by the statute of frauds.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Laches)**

20. Plaintiff's Complaint, and each purported cause of action contained therein, are barred under the doctrine of laches.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Waiver)**

21. Plaintiff, by reason of his conduct and actions, has waived the right, if any, to assert the claims in the Complaint and all purported causes of action contained therein.



**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Estoppel)**

22. Plaintiff is estopped by his own actions and course of conduct from pursuing the claims of the Complaint and all purported causes of action contained therein.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

23. Plaintiff's Complaint, and each purported cause of action contained therein, are barred under the doctrine of unclean hands.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**(Lack of Proximate Cause and Failure to Exercise Ordinary Care)**

24. If Plaintiff sustained any loss, injury, damage or detriment as alleged in the Complaint, the loss, injury, damage or detriment was caused and contributed to by Plaintiff's own actions in that he did not exercise ordinary care on his own behalf and in the performance of his employment at the times and places alleged in the Complaint, and Plaintiff's actions and omissions proximately contributed to the loss, injury and detriment alleged by Plaintiff, therefore Plaintiff's recovery, if any, should be reduced in proportion to the percentage of Plaintiff's negligence or in proportion to his fault.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate Damages)**

25. Plaintiff has failed to mitigate or reasonably attempt to mitigate his damages as required by law.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

**(Failure to Plead Facts Sufficient to Support Punitive Damages)**

26. Plaintiff is not entitled to recover punitive or exemplary damages herein, and any allegations with respect thereto should be stricken because Plaintiff has failed to plead and/or prove Facts sufficient to support allegations of malice, oppression, or fraud. Cal. Civ. Code § 3294.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE****(No Liability for Punitive Damages)**

27. Defendant is not liable for punitive damages because neither Defendant nor any of its officers, directors, or managing agents committed any alleged oppressive, willful, fraudulent, or malicious acts, authorized or ratified such alleged acts, or had advanced knowledge of the unfitness of any employee or employees who allegedly committed such an act, or employed any such employee or employees with a conscious disregard of the rights or safety of others. Cal. Civ. Code § 3294 (b).

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE****(Mixed Motive)**

28. Plaintiff's claims are barred, or he is precluded from recovering damages, to the extent that if Defendant's actions, which are the subject of plaintiff's claim, were actually motivated by both lawful and unlawful reasons (which Defendant denies), Defendant's legitimate reasons, standing alone, would have induced it to make the same decision it reached.

**TWENTY-NINTH AFFIRMATIVE DEFENSE****(After-Acquired Evidence)**

29. Plaintiff's claims are barred, or he is precluded from recovering damages, to the extent that Defendant learns through after-acquired evidence that Plaintiff engaged in any fraud or other misconduct that, if known, would have caused him to be terminated.

**THIRTIETH AFFIRMATIVE DEFENSE****(Privilege)**

30. Defendant asserts that any and all acts alleged to have been committed by Defendant or Defendant's agents were absolutely or qualifiedly privileged.

**THIRTY-FIRST AFFIRMATIVE DEFENSE****(Reservation of Rights)**

31. Plaintiff's Complaint for Damages and each cause of action contained therein is plead in a conclusory and vague manner, thereby making it impossible for Defendant to fully anticipate all defenses that may be available with respect to each of Plaintiff's claims.

1 Accordingly, Defendant reserves the right to add additional affirmative defenses that are  
2 applicable to this matter, at a subsequent time in the case.

3 **PRAYER**

4 WHEREFORE, Defendant prays for judgment as follows:

- 5 1. That Complaint, and each purported cause of action contained therein, be  
6 dismissed with prejudice, and that judgment be entered for Defendant;  
7 2. That Plaintiff take nothing;  
8 3. That Defendant be awarded its costs of suit herein; and  
9 4. That Defendant be awarded such other and further relief as the court may deem  
10 just and proper.

11  
12 DATED: June 29, 2011

SEYFARTH SHAW LLP

13  
14 By 

Jon D. Meer

Jonathan L. Brophy

Attorneys for Defendant

BAXTER HEALTHCARE CORPORATION

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
 3 ) ss  
 4 COUNTY OF LOS ANGELES )

5 I am a resident of the State of California, over the age of eighteen years, and not a party  
 6 to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles,  
 7 California 90067-3021. On June 29, 2011, I served the within documents:

8 **DEFENDANT BAXTER HEALTHCARE CORPORATION'S ANSWER TO**  
 9 **PLAINTIFF'S UNVERIFIED COMPLAINT**

- 10 ☐ I sent such document from facsimile machine (310) 201-5219 on June 29, 2011. I  
 11 certify that said transmission was completed and that all pages were received and that a  
 12 report was generated by facsimile machine (310) 201-5219 which confirms said  
 13 transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this  
 14 action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the  
 15 parties listed below.
- 16 ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully  
 17 prepaid, in the United States mail at Los Angeles, addressed as set forth below.
- 18 ☐ by personally delivering the document(s) listed above to the person(s) at the address(es)  
 19 set forth below.
- 20 ☐ by placing the document(s) listed above, together with an unsigned copy of this  
 21 declaration, in a sealed Federal Express envelope with postage paid on account and  
 22 deposited with Federal Express at Los Angeles, California, addressed as set forth below.
- 23 ☐ by transmitting the document(s) listed above, electronically, via the e-mail addresses set  
 24 forth below.

25 Grant A. Carlson, Esq.  
 26 Wendy K. Shiff, Esq.  
 27 FRIEDMAN, ENRIQUEZ & CARLSON, LLP  
 28 433 North Camden Drive, Suite 965  
 Beverly Hills, CA 90210  
 Telephone: (310) 273-0777  
 Facsimile: (310) 273-1115

I am readily familiar with the firm's practice of collection and processing correspondence  
 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
 motion of the party served, service is presumed invalid if postal cancellation date or postage  
 meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above  
 is true and correct.

Executed on June 29, 2011, at Los Angeles, California.

  
 Patricia E. Haden

# **Exhibit “C”**

Westlaw

48 Trials Digest 9th 13

Page 1

48 Trials Digest 9th 13 (Cal.Superior), 2004 WL 5066208  
For Dockets See [BC278495](#)

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Superior Court, Los Angeles County, California.

Perez vs. Lake Avenue Congregational Church of Pasadena

TOPIC:

Synopsis: Schoolteacher alleges retaliatory termination for whistleblowing

Case Type: Labor & Employment; **Whistleblower**; Labor & Employment; Termination/Constructive Discharge; Labor & Employment; Violation of Public Policy; Defamation; Slander; Contracts; Breach; Labor & Employment; Breach of Contract

DOCKET NUMBER: BC278495

STATE: California

COUNTY: Los Angeles

Verdict/Judgment Date: February 5, 2004

JUDGE: [Soussan G. Bruguera](#)

ATTORNEYS:

Plaintiff: [Donald Conway](#), Shegerian & Associates Inc., Beverly Hills.; [N. Nick Ebrahimian](#), Shegerian & Associates Inc., Beverly Hills.; [Alfred Hakim](#), Law Offices of Alfred Hakim, Los Angeles.; [Carney R. Shegerian](#), Shegerian & Associates Inc., Beverly Hills.

Defendant: [Steven R. Bangerter](#), Cooksey, Toolen, Gage, Duffy & Woog, Costa Mesa.; [Todd A. James](#), Cooksey, Toolen, Gage, Duffy & Woog, Costa Mesa.

SUMMARY:

Verdict/Judgment: Plaintiff

Verdict/Judgment Amount: \$970,001

Range: \$500,000-\$999,999

**Wrongful termination:** \$120,000 economic; \$350,000 non-economic. Defamation: \$1 past economic; \$125,000 future economic; \$250,000 past non-economic; \$125,000 future non-economic.

Trial Type: Jury

Trial Length: Not reported.

Deliberations: Not reported.

Jury Poll: Not reported.

EXPERTS:

Plaintiff: Not reported.  
Defendant: Not reported.

TEXT:  
CASE INFORMATION  
FACTS/CONTENTIONS

According to Defendant: Plaintiff Deborah Perez worked for defendants Lake Avenue Congregational Church of Pasadena dba Lake Avenue Church School and Kohar Jarlekian as a teacher of minor children for four years. She alleged that defendants unlawfully terminated her employment in response to her making complaints to both defendants and the state government about the illegally high number of students being enrolled in her classroom by defendants. Plaintiff alleged that the teacher-to-student ratio was too high as a result of defendants' financial motivations. Plaintiff further alleged that her complaints about safety problems at defendants' facility were another illegal motivating factor in the termination of her employment. Plaintiff further alleged that defendants defamed her by speaking falsely and negatively about her work performance and skills and breached their implied and express employment contract with her.

Defendants denied all of plaintiff's allegations. Defendants denied that any actions on their part were taken illegally and alleged that plaintiff was fired from her job because of poor work performance.

CLAIMED INJURIES

According to Defendant: **Emotional distress.**

CLAIMED DAMAGES

According to Defendant: Not reported.

SETTLEMENT DISCUSSIONS

According to Defendant: Not reported.

Trials Digest, A Thomson/West business

Los Angeles County Superior Court/Downtown

48 Trials Digest 9th 13 (Cal.Superior), 2004 WL 5066208

END OF DOCUMENT



Westlaw

2009 WL 4069942

Page 1

2009 WL 4069942 (Cal.Superior)

For Opinion See 2009 WL 6411755 (Trial Order), 2009 WL 2000640 (Trial Order), 2009 WL 2000641 (Trial Order)

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Superior Court, Los Angeles County, California.

Gregg Levin v. Canon Business Solutions Inc., Canon U.S.A. Inc., Jack Ketchum, John Focarino, Rolando Nuestro and Michael Cerame

No. BC390728

DATE OF VERDICT/SETTLEMENT: November 06, 2009

TOPIC: EMPLOYMENT - **WRONGFUL TERMINATION** - INTENTIONAL TORTS - FALSE IMPRISONMENT - PRIVACY - INVASION OF PRIVACY - INTENTIONAL TORTS - **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS** - NEGLIGENCE - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS  
Fired Employee Sued Company for False Imprisonment, Distress

SUMMARY:

RESULT: Verdict-Plaintiff

Award Total: \$207,235

The jury found in favor of Levin against Cerame, Solutions and CUSA on the claims for false imprisonment, invasion of privacy and **intentional infliction of emotional distress**.

Judgment was entered against Solutions and CUSA in the amount of \$1,810.25 each on the causes of action for false imprisonment and invasion of privacy, and against Cerame for the total of \$3,614.50 on the same claims.

EXPERT WITNESSES:

Plaintiff: Anthony E. Reading, Ph.D.; Psychology/Counseling; Beverly Hills, CA Richard B. Danehy; Human Resources Policies; Santa Barbara, CA

Defendant: Francine Kulick, Ph.D.; Psychological Injuries; Santa Monica, CA

ATTORNEYS:

Plaintiff: Martin D. Singer; Lavelly & Singer; Los Angeles, CA (Gregg Levin); William J. Briggs; Lavelly & Singer, PC; Los Angeles, CA (Gregg Levin); Todd S. Eagan; Lavelly & Singer, PC; Los Angeles, CA (Gregg Levin)

Defendant: Joseph W. Hammell; Dorsey & Whitney, LLP; Minneapolis, MN (Canon Business Solutions Inc., Canon U.S.A. Inc., Jack Ketchum, John Focarino, Rolando Nuestro); Nicole Haaning; Dorsey & Whitney, LLP; Minneapolis, MN (Canon Business Solutions Inc., Canon U.S.A. Inc., Jack Ketchum, John Focarino, Rolando Nuestro); Jessica Linehan; Dorsey & Whitney, LLP; Minneapolis, MN (Canon Business Solutions Inc., Canon Business Solutions Inc., Canon U.S.A. Inc., Canon U.S.A. Inc., Jack Ketchum, Jack Ketchum, John Focarino, John Focarino, Rolando Nuestro, Rolando Nuestro); Caroline L. Dasovich; Caroline L. Dasovich & Associates; El Segundo, CA (Michael Cerame)

JUDGE: Michael L. Stern

RANGE AMOUNT: \$200,000-499,999

STATE: California  
COUNTY: Los Angeles

INJURIES: Levin sought unspecified monetary damages for emotional distress, which he claimed was intentional on the part of the defendants, via accusations, threats, false imprisonment and invasion of privacy.

Facts:

On or around March 21, 2008, plaintiff Gregg Levin, 45, was terminated from his color copy service technician position at Canon Business Solutions Inc.

On March 17, Levin was called to meet with company managers, two internal auditors and private security consultant Michael Cerame at the Solutions office in Calabasas.

According to Levin, Cerame demanded to be taken to the plaintiff's home. Levin initially refused, but then complied when Cerame threatened him with termination and embezzlement charges.

Levin claimed that once they arrived at his home, the men raided his house and garage, and that one Solutions employee looked through his children's room for company property. Levin claimed that the men left his home after he called the police. A few days later, he was out of a job.

Levin sued Solutions, parent company Canon USA Inc. (CUSA) and Cerame, as well as Solutions employees Jack Ketchum, John Focarino and Rolando Nuestro. He alleged **wrongful termination** in violation of public policy, false imprisonment, invasion of privacy, violation of the Bane Civil Rights Act, defamation, tortious interference with prospective economic advantage and intentional and negligent infliction of emotional distress.

The plaintiff claimed that he regularly stored company property at his home with his employer's permission. He alleged that the company soon began to threaten him with criminal charges if he didn't confess to stealing the property.

Levin alleged that Solutions wrongfully terminated him in **retaliation** for calling the police. He further alleged false imprisonment for being forced to ride in the same car as Cerame to his home, where the alleged raid took place. He then claimed that Cerame and the three employees unlawfully searched his home, an invasion of privacy.

The defense responded that Solutions received a tip from Levin's ex-wife that he was stealing company property, storing it in his garage, selling it and/or using it for his own copy-repair business. Based on this information, the company hired Cerame to investigate the matter.

The defense also claimed that Levin voluntarily agreed to enter Cerame's car and allow the defendants to enter and search his garage. The defendants further claimed that they only searched his garage, and that Levin himself requested that another Solutions employee walk through his house with him to verify that there was no company property inside.

On summary judgment prior to trial, the court dismissed the plaintiff's **wrongful termination**, Bane Civil Rights Act and negligent infliction of emotional distress claims. During trial, the plaintiff's claims for defamation and tortious interference and all claims against Nuestro were dismissed.

The defense filed a cross-complaint against Levin for various claims, including conversion, interference with contractual relations and prospective economic advantage, fraud, breach of contract and breach of various labor code provisions.

The defense denied that Levin was entitled to damages for emotional distress.

On the cross-complaint, Solutions sought damages, including wages paid to Levin while he was allegedly stealing from the company.

On the claim for **intentional infliction of emotional distress**, judgment was entered against Solutions in the amount of \$50,000 and against CUSA for \$150,000.

Levin's final award was \$207,235, including costs.

The jury found in favor of Solutions employees Ketchum and Focarino on all claims, and also awarded Solutions \$1,840 against Levin on its cross-complaint.

ALM Properties, Inc.

Superior Court of Los Angeles County, Central

PUBLISHED IN: VerdictSearch California Reporter Vol. 8, Issue 46

2009 WL 4069942 (Cal.Superior)

END OF DOCUMENT

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Stephen V. Wilson and the assigned discovery Magistrate Judge is John E. McDermott.

The case number on all documents filed with the Court should read as follows:

**CV11- 5447 SVW (JEMx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) <b>DAVID KAPLAN</b>	<b>DEFENDANTS</b> <b>BAXTER HEALTHCARE CORPORATION</b> (erroneously sued as BAXTER HEALTHCARE, INC.)
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) <b>FRIEDMAN, ENRIQUEZ &amp; CARLSON, LLP</b> Grant A. Carlson, Esq. / Wendy K. Shiff, Esq. 433 North Camden Drive, Suite 965 Beverly Hills, CA 90210 Telephone: (310) 273-0777	<b>Attorneys (If Known)</b> <b>SEYFARTH SHAW LLP</b> Jon D. Meer (SBN 144389) / Jonathan L. Brophy (SBN 245223) 2029 Century Park East, Suite 3500 Los Angeles, California 90067-3021 Telephone: (310) 277-7200

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.)  <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

  
**IV. ORIGIN** (Place an X in one box only.)  
☐ 1 Original Proceeding    ☒ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from another district (specify):    ☐ 6 Multi-District Litigation    ☐ 7 Appeal to District Judge from Magistrate Judge
   
  
**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)  
**CLASS ACTION under F.R.C.P. 23:** ☐ Yes ☒ No    **MONEY DEMANDED IN COMPLAINT: \$** \_\_\_\_\_
   
  
**VI. CAUSE OF ACTION** (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 Wrongful termination and intentional infliction of emotional distress; 28 U.S.C. § 1332
   
  
**VII. NATURE OF SUIT** (Place an X in one box only.)
 

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration	<b>TORTS PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 22 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE / PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 61 HIA(1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW 405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV11-05447

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- ☐
- A. Arise from the same or closely related transactions, happenings, or events; or
- 
- ☐
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- 
- ☐
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- 
- ☐
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☒ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: *	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: *	California County outside of this District; State, if other than California; or Foreign Country
	Baxter Healthcare Corporation is incorporated in Delaware and has its principal place of business in Illinois.

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: *	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Jonathan L. Brophy

Date June 30, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))